S.B. CIVIL MISC. APPEAL NO.1054/2006.
National Insurance Company Ltd.
Vs.
Smt. Sajana Devi & Ors.

Date of Order :: 18th December 2006.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Sanjeev Johari, for the appellant.
Mr. Trilok Joshi for the respondents Nos.1 to 6 – Caveators.

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By way of this appeal the insurer of vehicle involved in accident seeks to question the quantum of compensation awarded by the Motor Accidents Claims Tribunal, Hanumangarh in Claim Case No.136/2004 to the wife, children and mother of accident victim Ranveer Ram, about 45 years in age.

On 09.03.2004, the victim Ranveer Ram while driving a motorcycle bearing registration No. RJ 31 2M 3043 going from his village Hirnawali to Hanumangarh, sustained injuries on being hit by an oncoming jeep bearing registration No. HRD 5982. Ranveer Ram was taken to Government Hospital, Hanumangarh Town and then was removed to DMC Hospital, Ludhiyana where he succumbed to the injuries while undergoing treatment on 10.04.2004.

Stating the liability of the persons related with both the vehicles involved in the accident, the claimants made a claim for compensation stating that the deceased was the only bread-earner of the family; that the deceased was earning about Rs.2,00,000/- per annum from agriculture; and that after his demise two persons were required to be deployed for looking after agricultural work at Rs.5,000/- per month. The claim for compensation was contested by the non-applicant No. 1, the jeep owner with the submissions that he had sold the vehicle to one Gurtej Singh but registration was not transferred in the name of the purchaser; and that the vehicle was insured with the non-applicant No.3. The non-applicant No.2 while stating general denial of the claim averments asserted that he had never driven the jeep in question nor caused any accident. The non-applicant No.3, the present appellant and insurer of the jeep denied the accident having occurred for any negligence on the part of the jeep driver; and also submitted that the jeep driver was not holding a valid driving licence and yet the vehicle was handed over to him by its owner hence, for violation of policy conditions, the insurer was not liable. It was also alleged that the accident was caused by the negligence of the motorcyclist himself and his heirs were not entitled to claim any compensation from the non-applicant No.3. The insurer of motorcycle, non-applicant

No.4 asserted that the accident occurred for rash and negligent driving by the jeep driver and it was also alleged that Ranveer Ram was holding a driving licence only for tractor-trolley and not for a two-wheeler. The non-applicant No.5, owner of the motorcycle, also asserted that the accident occurred for the mistake of the jeep driver.

After framing of necessary issues and taking the evidence led by the parties, the Tribunal found in issue No.1 that Ranveer Ram died for the injuries sustained in the accident in question while undergoing treatment at DMC Hospital, Ludhiyana. Applying the principles of res ipsa locquitur, the Tribunal found that the motorcycle was thrown from the place of incident marked 'A' in the site plan Ex.3 to place 'B' on 23 feet wide road showing that the accident was caused by the jeep by hitting the motorcycle head-on; though the jeep had enough space available on the road. Adverse inference was also drawn for the jeep driver, non-applicant No.2 Tek Singh having not appeared in evidence. The objection regarding want of valid driving licence with the victim Ranveer Ram was rejected with reference to the fact that the non-applicant No.4 did not produce relevant evidence from the Transport Department and even otherwise, the liability for accident was affixed on the jeep driver hence, this issue did not require further consideration. Issue No.4 relating to want

of driving licence with the jeep driver was also decided against the insurer with the finding that the driving licence of the non-applicant No.2 (Ex.7) was produced on record showing that he was authorised to drive a light motor vehicle at the relevant time.

Taking up quantification of compensation in issues Nos. 2 and 5, the Tribunal observed that the income yielding agricultural land of the deceased was available to the claimants but then, the Tribunal referred to deployment of two labourers at Rs.2,200/- per month each and taking this amount of Rs.4,400/- in total assessed loss of income at Rs.7,92,000/- (4,400 x 12 x 15). The Tribunal then deducted one-third on the personal expenditure of the deceased and hence arrived at a figure of Rs.5,28,000/- towards pecuniary loss for the claimants. The Tribunal further allowed Rs.20,000/- towards non-pecuniary loss; Rs.5,000/- towards funeral expenses; and Rs.1,500/- towards litigation expenses. With reference to the treatment of the victim Ranveer Ram at Ludhiyana for over one month and the bills of treatment expenditure, the Tribunal considered it proper to allow Rs.5,000/- towards transportation charges; Rs.3,000/- towards expenditure on attendants and Rs. 1,26,261/- towards the bills of treatment expenditure. In this manner, the Tribunal assessed total compensation at Rs.6,88,761/- and after

deducting Rs.50,000/- allowed under No Fault Liability awarded interest @ 6% per annum on the remaining amount from the date of filing of the claim application, i.e. 13.07.2004.

Arguing on behalf of the appellant-insurer, learned counsel Mr. Sanjeev Johari has strenuously contended that the deceased was not holding a valid driving licence for the purpose of driving a two-wheeler motorcycle and, therefore, he alone was liable for the incident. Learned counsel submitted that the Tribunal has not objectively analysed the evidence produced on record and has erred in fastening exclusive responsibility on the jeep driver for the accident. Learned counsel further submitted that, even if it were a case of contributory negligence, the award of compensation ought to have been reduced to the extent of contributory negligence of the deceased. Assailing the quantum of compensation, learned counsel urged that the ultimate award with application of multiplier of 15 stands on higher side when it is apparent that the agricultural income was retained with the claimants and when the age of the deceased was stated at 45 years in the injury report and so also the post-mortem report.

Learned counsel for the appellant-insurer was posed the question if the appellant ever sought and obtained permission under Section 170 of the Motor Vehicles Act for the purpose of contesting the claim on merits; to which learned

counsel frankly conceded that no such permission was obtained but submitted that the award being highly excessive deserves modification.

Having examined the impugned award and the record, this Court is clearly of opinion that this appeal by the appellant-insurer remains bereft of substance and deserves to be dismissed without being admitted.

The appellant-insurer having chosen not to seek permission under Section 170 of the Motor Vehicles Act and the claim for compensation having otherwise been contested by the other non-applicants, there appears no reason to permit the appellant-insurer to raise the grounds related with the merits of the case like the question about responsibility towards the accident.

Even otherwise, having examined the record of the case, this Court is satisfied that the Tribunal has not committed any error in finding the accident to have occurred for the negligence and mistake of the jeep driver only. It is apparent from the site plan (Ex.3) that the accident occurred in the middle of a plain road and then, the jeep driver, non-applicant No.2 has not been produced in evidence. There is no evidence on record to suggest that the collision was brought about for any fault on the part of the motorcyclist. For non-production of the jeep driver in evidence, an adverse

inference is definitely required to be drawn against the non-applicants and, therefore, finding on issue No.1 needs no interference. The presumption sought to be invited by the appellant-insurer of the fault on the part of the motorcyclist for his having only a licence to drive a tractor is too far stretched and is of no relevance when the non-applicants have failed to lead even primary evidence to show any mistake on the part of the motorcyclist for the incident in question; and when they have failed to show that want of such licence with the victim was the direct or proximate cause of accident.

So far quantification of compensation is concerned, again the appellant-insurer cannot be acceded the latitude to raise question in this regard when it has chosen not to seek any permission under Section 170 of the Motor Vehicles Act. Moreover and yet again, having examined the record, this Court is satisfied that the award on its quantification of compensation is rather moderate and calls for no interference.

The deceased has been shown earning by way of agriculture, cultivating about 85 bighas of command land, himself holding about 11 bighas of such land. It was asserted that he was earning about Rs.2,00,000/- per annum. However, the Tribunal has considered the component of agricultural income retaining itself and has merely taken the

income at Rs.4,400/- per month that is at Rs.52,800/- per annum; with reference to the two labourers required to be deployed. Moreover, the Tribunal has proceeded to deduct one-third therefrom that practically amounts to taking loss of contribution for the claimants only at Rs.35,200/- per annum, i.e. less than Rs.3,000/- per month.

Application of multiplier of 15 does not appear incorrect when it is noticed that the claimants asserted the age of the deceased at about 41-43 years in the claim application and the age of the wife has been given at 38 years and that of the children between 19 to 12 years. Of course in the injury report Ex.5 and in the post-mortem report Ex.6 the age of victim Ranveer Ram has been stated at 45 years but there is no other material on record to conclude that the deceased was above 45 years of age so as to consider him in the bracket of 45-50 years for the purpose of applying the multiplier of 13. In the overall circumstances of the case, age of the deceased could only be put in the bracket of 40-45 years and, therefore, application of multiplier of 15 with reference to Second Schedule does not appear highly excessive. Even otherwise, when it is noticed that the Tribunal has taken rather lower amount towards annual loss of contribution, the ultimate assessment of pecuniary loss remains moderate. In fact, a substantial component of the award of compensation in this

case, of Rs.1,34,261/-, has been of the amount spent on treatment and attendants of the deceased for about one month he battled for life before giving in. The Tribunal has allowed interest only at the rate of 6% per annum from the date of filing of claim application that too is not on the higher side.

Therefore, the award made by the Tribunal in the ultimate analysis remains rather moderate and cannot be said to be exorbitant or highly excessive so as to consider modification at the instance of the insurer.

This appeal remains absolutely bereft of substance and is, therefore, dismissed summarily.

(DINESH MAHESHWARI), J.

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